Supreme Court, U.S.
FILED
JAN 31 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1145

In the Supreme Court of the United States

OCTOBER TERM, 1985

CLANCY WILLIAMS, LOY BEAN, ROBERT L. GILLIAN, and the CITY OF LAWTON, OKLAHOMA, a municipal corporation,
Petitioners

vs.

MARGARET A. WOLFENBARGER d/b/a SHADY SAM'S PAWN SHOP,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENT

WARREN H. CRANE
812 D Avenue
Lawton, Oklahoma 73501
(405) 355-9119
Attorney for Respondent

February, 1986

TABLE OF CONTENTS

PAGE

ARGUMENT 3

1. Did the Court of Appeals err in its determination that *Parrat* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), and *Hudson* v. *Palmer*, 468 U.S. ___, 82 L.Ed.2d 393 (1984), were distinguishable from the instant case relative to due process? 3

2. Did plaintiff-respondent state a claim for which relief could not be granted as to the defendant City of Lawton, Oklahoma, a municipal corporation? 4

3. Should the policemen be accorded prosecutorial immunity because they followed directives of a district attorney or should they have qualified immunity for the same reason? 4

CONCLUSION 4

CERTIFICATE OF SERVICE follows Brief.

TABLE OF AUTHORITIES

Parrat v. *Taylor*,
451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) 3

Hudson v. *Palmer*,
468 U.S. ___, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) 3

Coolidge v. *New Hampshire*,
403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) 3

No. 85-1145

In the
Supreme Court of the United States
OCTOBER TERM, 1985

CLANCY WILLIAMS, LOY BEAN,
ROBERT L. GILLIAN, and the
CITY OF LAWTON, OKLAHOMA,
a municipal corporation,
Petitioners

vs.

MARGARET A. WOLFENBARGER d/b/a
SHADY SAM'S PAWN SHOP,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Posture of Case:

Margaret Wolfenbarger, d/b/a Shady Sam's Pawn Shop, brought a civil rights case alleging in her complaint that named defendants seized her property contrary to the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

Trial court granted summary judgments for all defendants on the basis that Plaintiff had no property rights in

a pledge of personalty taken from a thief. The Court of Appeals for the Tenth Circuit reversed on the basis that an honest pawnbroker has a lawful right to possession of property, even stolen property, as against the whole world, including these defendants, and excepting only the rightful owner. That this determination is based on Oklahoma law.

There is no answer filed by any defendant.

In argument on appeal defendants advanced the claim that their actions did not violate due process because Oklahoma provided adequate post-deprivation remedies. This was an alternative ground to uphold the grant of summary judgment and was not reached by the trial court but was rejected on its merits by the Court of Appeals.

Certiorari, to the Court of Appeals for the Tenth Circuit, is sought by Clancy Williams, Loy Bean, Robert L. Gillian and the City of Lawton, Oklahoma, a municipal corporation, on the basis of three questions.

ARGUMENT

1. Did the Court of Appeals err in its determination that *Parrat* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed. 2d 420 (1981), and *Hudson* v. *Palmer*, 468 U.S. . . ., 82 L.Ed.2d 393 (1984), were distinguishable from the instant case relative to due process?

In the petition for certiorari filed herein the decision of the Court of Appeals is set out. Respondent does not presume to improve on that analysis. However, this Court's attention is directed to *Hudson* v. *Palmer*, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), part B, where this is said:

> "Two terms ago we reaffirmed our holding in *Parrat* in *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 71 L.Ed.2d 265, 102 S.Ct. 1148 (1982), in the course of holding that post-deprivation remedies do not satisfy due process where a deprivation of property is caused by conduct pursuant to established state procedure, rather than random and unauthorized actions."

It is determined that this property had been in the pawn shop under a police hold from August 15 to November 10 when it was seized without a warrant or other judicial process and released to a third party claimant within three days of the seizure. The record is silent as to any need for quick action on the part of the State as of the 10th day of November. The record is also silent as to why the police could not comply with plaintiff's Fourth Amendment substantive rights and seek a warrant or other judicial process before seizing the property and thus comply with the inadvertence requirement of *Coolidge* v. *New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

2. **Did plaintiff-respondent state a claim for which relief could not be granted as to the defendant City of Lawton, Oklahoma, a municipal corporation?**

This question was never reached by the trial court as he granted converted motions for summary judgment for all defendants on the basis that plaintiff had no property interest. This question was not raised in the Court of Appeals. It is submitted that this matter should first be ruled on at trial level.

3. **Should the policemen be accorded prosecutorial immunity because they followed directives of a district attorney or should they have qualified immunity for the same reason?**

This question was answered by the Court of Appeals in its last two sentences in footnote 7 in its decision found on page 25d (Appendix D) to the petition for certiorari.

> ". . . Some of the defendants also argue on appeal, that they are protected by immunity. We believe this issue is best developed in the first instance in the trial court."

CONCLUSION

Since this case was returned to the trial court for further procedure, it would seem that defendants would have an appeal to the Circuit Court of Appeals for any substantial error and then to this Court if uncorrected. That case development is so rudimentary that it would be exceedingly difficult to draw conclusions to substantial federal questions.

Therefore, it is respectfully submitted that the writ of Certiorari sought herein should be denied.

WARREN H. CRANE
812 D Avenue
Lawton, Oklahoma 73501
(405) 355-9119

Attorney for Respondent

February, 1986

CERTIFICATE OF SERVICE

I, Warren H. Crane, counsel for Respondent herein, Margaret Wolfenbarger, d b a Shady Sam's Pawn Shop, hereby certify that on this day of February, 1986, I served three copies of the foregoing Response Brief in Opposition on the parties herein as follows:

> David M. Curtis, City Attorney, Gerald S. Rakes, Assistant City Attorney, 103 S.W. 4th Street, Lawton, Oklahoma 73501, Counsel for Petitioners herein, and Robert A. Nance, Assistant Attorney General, Oklahoma Criminal and Federal Division, Counsel of record for Richard Tannery and Robert Perrine, at 112 State Capitol Building, Oklahoma City, Oklahoma 73105,

by depositing same in the U.S. Mail, postage fully prepaid.

All parties required to be served have been served.

.....

Warren H. Crane